REME COURT. U. S.

FILED
JUL 16 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 115

ROLAND H. DEL MAR AND THE RIGGS NATIONAL BANK OF WASHINGTON, D. C., AS EXECUTORS OF THE ESTATE OF CHARLES DELMAR, DECEASED, *Petitioners*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

RESPONSE OF PETITIONERS TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Petitioners deny that the question herein is, as stated by the Government in its Memorandum in Opposition, whether the estate tax should be "equitably apportioned" so that the widow's share would not be reduced

by the payment of such estate taxes (Memorandum, p. 2). In their petition filed herein, petitioners made only passing reference to the general rule of equitable apportionment in a footnote (Pet. p. 8) and here contend that this case is *not* to be resolved by a determination of whether such rule is to be applied by the courts of the District of Columbia.

On the contrary, petitioners assert that the sole question involved herein is whether, in the light of the Congressional intent to achieve uniformity of tax impact with those jurisdictions having community property laws, it was the intent of Congress that the statutory share of a District of Columbia intestate decedent, otherwise qualifying for the marital deduction, should be burdened with a portion of the estate tax. Petitioners contend that it was the unmistakable intent of Congress that it should *not* be so burdened.

Having raised a strawman of the application in the District of a general rule of equitable apportionment, with the accompanying implication that its adoption is required to attain the end herein sought by petitioners, the Government proceeds by noting that the rule has long been rejected by the local courts and concludes that there is thus presented only a local question of District of Columbia law that is not ordinarily reviewed in this Court.

It is the contention of petitioners that, whether or not the general principle of equitable apportionment is deemed to apply in the District of Columbia, the courts of the District, with regard to the widow's share, are bound and controlled by the manifest intent of the Congress to free that share from estate taxation so far as it was within the power of Congress to do so.

As is clear from the statement of the Court below (Pet. 5a), the issue here involved is whether "the marital deduction provision of the tax law reflects a policy that Congress considers applicable to govern local law in the District of Columbia". Petitioners submit that the language of the marital deduction provision and its purpose as reflected by its legislative history allow only one answer to this question.

In passing it may be noted that, although the Court below refers in pejorative terms to a widow "dissatisfied with the terms of her husband's will" and declines to upset its settled course of decisions "merely to allow a dissenting widow a larger portion of the estate at the expense of * * * the Government" (Pet. 4a and 5a), and this same attitude is carried over into the Government's Memorandum, the principles of law determined herein will apply equally to the widow of a true intestate where no dissent from his will is involved.

As to the Constitutional argument of petitioners, the Government reasons that the uniformity in excise taxes required by the Constitution is geographical uniformity, not uniformity of intrinsic equality and operation; that this allows resolution of property rights pursuant to the local *state* law in order to determine the ultimate impact of the federal estate tax; that as the result, the requisite geographical uniformity is not lacking because different *states* have enacted laws of varying natures affecting the amount of the marital deduction; and concludes that "this is just as true when the local law is a District of Columbia statute."

With the latter conclusion, petitioners disagree. The Congress is not a "local" legislature; when it legislates

for the District, Congress acts as a legislature of national character.

The provisions of Article I, Section 8, clause 17, of the Constitution were *not* intended to give to the Congress an unlimited power to legislate for the District in all cases *without* reference to other provisions of the Constitution. Were this not so, then Congress might pass bills of attainder and ex post facto laws and exercise a despotic authority over the District of Columbia, depriving its citizens of their rights entirely. Thus, any statute enacted by the Congress solely for application in the District must conform to the Constitutional limitations on the powers of Congress elsewhere contained in the Constitution. Further, petitioners assert that any such legislation may not, as it relates to legislation of national application, result in the creation of an unconstitutional feature in the latter. Thus, it is submitted that if, in enacting the marital deduction provision, the Congress could not have specifically provided that its benefit was not fully available to the District of Columbia without violating the uniformity provision, Congress may not do so through the indirect method of enacting or permitting continuance of a statute of local application creating the same result.

The petition for a writ of certiorari should be granted and the Decision of the Court below reversed.

Respectfully submitted,

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